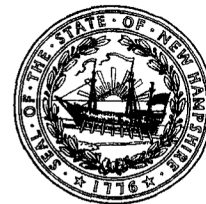




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 21, 2005

Kel-Log, Inc.
Attn: Michael P. Kelly
743 East River Road
Milan, NH 03588

Re: Docket No. AF 05-012 – Kel-Log, Inc.

Dear Mr. Kelly:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Director of the Water Division, and accepted by Commissioner Michael P. Nolin on April 18, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,
COPY
Michael P. Sclafani,
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
James Martin, DES Public Information Officer
Linda Magoon, DES WD

Kel-Log, Inc.
Attn: Michael P. Kelley
743 East River Road
Milan, NH 03588

Re: Lost Nation Road, Northumberland, NH
Tax Map R-10, Lots 215 & 1307

**ADMINISTRATIVE FINE
NO. AF 05-012**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division (the "Division") and Kel-Log, Inc., parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Pursuant to RSA 485-A:17, the Department of Environmental Services ("DES") regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
4. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 485-A:17, rules adopted under RSA 485-A:17, and permits issued under RSA 485-A:17. Pursuant to RSA 485-A:22, the Commissioner has adopted Env-C 603.02 to establish a schedule of fines for such violations.
5. Kel-Log, Inc., is a New Hampshire corporation in the business of cutting and selling timber.
6. Scott A. Dillon and Thomas R. Dillon are the owners of land located off of Lost Nation Road, more particularly described on Town of Northumberland Tax Map R-10 as Lots 215 and 1307 ("the Property").
7. On May 20, 2004, a Notice to Intent to Cut Wood or Timber ("Notice") was filed with the town of Northumberland regarding the subject Property. The Notice listed Michael P. Kelley of Kel-Log, Inc. as the entity responsible for logging the Property.
8. On January 20, 2005, the Division issued Notice of Proposed Administrative Fine and Hearing No. AF 2005-012 (the "Notice") to Kel-Log, Inc. seeking fines totaling \$8,000 for violations of RSA 482-A and RSA 485-A:17.

9. Specifically, the Notice cited Kel-Log, Inc. for violating RSA 482-A:3, I by failing to comply with timber harvesting best management practices. Pursuant to Env-C 614.06(f), the Division sought a fine of \$2,000.
10. Specifically, the Notice cited Kel-Log, Inc. for violating RSA 485-A:17 by failing to comply with best management practices, resulting in excessive turbidity to an intermittent stream. For this violation, the Division sought a fine of \$1,000.
11. Specifically, the Notice cited Kel-Log, Inc. for violating RSA 485-A:17 by failing to comply with best management practices, resulting in excessive turbidity to a perennial stream. For this violation, the Division sought a fine of \$1,000.
12. Specifically, the Notice cited Kel-Log, Inc. for violating RSA 482-A:3, I by disturbing more than 200 linear feet of stream channel by allowing sediment to be deposited in the stream. For this violation, sought a fine of \$2,000.
13. Specifically, Kel-Log, Inc. for violating RSA 482-A:3, I by failing to adequately install and maintain erosion controls to protect a perennial stream in August 2003 and November 2004. For this repeat violation, the Division sought a fine of \$2,000.
14. In order to settle this matter, the Division and Kel-Log, Inc. have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
15. Of the total \$8,000 fine sought, \$5,000 shall be suspended contingent on the following:
 - a. Kel-Log, Inc. shall sponsor a one-day workshop on forested wetland identification to be held in the Lancaster, NH region. The workshop shall be held within one year of the date of execution of this Settlement Agreement by the Commissioner of the Department of Environmental Services and shall be conducted during the growing season. Kel-Log, Inc. shall attempt, by local advertising and personal contacts, to obtain attendance of at least 15 loggers or foresters in the Lancaster region. The workshop shall be taught by a certified wetland scientist approved by DES at the expense of Kel-Log, Inc.; and
 - b. No further violations of regulations administered by DES by Kel-Log, Inc., its owners or employees for a period of two years from the date of execution of this Agreement by the Commissioner of the Department of Environmental Services.
16. Failure of Kel-Log, Inc., to comply with the terms of this Agreement shall render the suspended portions of the fine immediately due and payable upon notice from DES.
17. Kel-Log, Inc. agrees to pay the remaining fine of \$3,000 upon execution of the Agreement by an authorized representative of Kel-Log, Inc.
18. Payment will be made by certified check made payable to: "Treasurer, State of New Hampshire" and will be mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
Office of the Commissioner
P.O. Box 95
Concord, NH 03302-0095

19. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a a DES may charge a fee in the amount of 5% of the face amount of the check or \$25, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

20. By executing this Agreement, Kel-Log, Inc. waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

21. The effective date of this Agreement will be the date on which it is signed by Kel-Log, Inc. and the Director of the Water Division and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date upon which it has been accepted by the Commissioner.

22. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Kel-Log, Inc.

4/12/05
Date


By: 
Duly Authorized

DES Water Division

4/18/05
Date


Harry Stewart, Jr., Director

This Motion to Accept Settlement Agreement is granted this 18th day of APRIL, 2005.


Michael P. Nouri, Commissioner
NH Department of Environmental Services